## IN THE UNITED STATES BANKRUPTCY COURT FOR THE CENTRAL DISTRICT OF ILLINOIS

IN RE:	
HAYSLETT/JUDY OIL, INC.,	) Bankruptcy Case No. 03-91436
Debtor.	)

#### **OPINION**

This matter having come before the Court for hearing on confirmation of the Debtor's Plan of Reorganization, Objection to Confirmation of Plan filed by the Illinois Department of Revenue, and Objection to Classification of Portions of Claim No. 13 of Illinois Department of Revenue filed by the Debtor; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The issue before the Court is whether part of the tax claim filed by the Illinois Department of Revenue, in the amount of \$256,387.44, is a claim that should be classified as a "trust fund tax," and, therefore, it would have priority under 11 U.S.C. § 507(a)(8)(C), or whether only \$65,830.44 of the Illinois Department of Revenue's claim should be classified as a priority under 11 U.S.C. § 507(a)(8)(E), as an "excise tax." At hearing on November 25, 2003, the parties agreed that this Court's ruling upon the issue of whether the taxes in question were "trust fund taxes" or "excise taxes" would be controlling of the dispute between the parties, and that the determination of this issue would control the claim amount.

The Court has reviewed the case authority cited by the parties, and finds that the tax which is the subject of Claim No. 13 is governed by the Illinois Motor Fuel Tax, cited as 35 ILCS 505/1, et seq. Although there are no reported decisions regarding the question of how Illinois Motor Fuel Taxes are classified under 11 U.S.C. § 507(a)(8), the Court finds the cases of In re Funk, 1999 WL 33596475 (Bankr. S.D. Ill. 1999), and In re Groetken, 843 F.2d

1007 (7th Cir. 1988), to be instructive on the issue before the Court. In reviewing the criteria

set out in Funk and Groetken, this Court finds that the Illinois Motor Fuel Tax is, in fact, an

excise tax, rather than a trust fund tax. In the case of a trust fund tax, the tax is actually

imposed upon another person, such as an employee or a retail customer, but is collected by

the business or employer and held "in trust" temporarily until it is remitted to the taxing

authority. The Illinois Motor Fuel Tax is clearly not such a tax. The Illinois Motor Fuel Tax

is rather an excise tax in that it is imposed directly on the business that sells motor fuel in

Illinois, rather than on the customers of that business. The formula for computing the fuel

distributor's motor fuel tax liability is based upon the amount of fuel that passes through the

distributor's tanks in a given calendar month. There is nothing, either in the statute or in the

case law, to indicate that the Illinois Motor Fuel Tax is a tax upon the purchaser. Thus, the

Court finds that, based upon the clear language of the statute and the manner in which

collection of the Illinois Motor Fuel Tax is administered, said tax is an "excise tax" within

the meaning of 11 U.S.C. § 507(a)(8)(E) and should be given priority commensurate with §

507(a)(8)(E), in combination with 11 U.S.C. § 523(a)(1)(A).

Based upon the conclusion that the Illinois Motor Fuel Tax is an excise tax, the Court

finds that the portion of Claim No. 13, filed by the Illinois Department of Revenue, should

be a priority in the amount of \$65,830.44. Further, the Court finds that, pursuant to 11 U.S.C.

§ 507(a)(8)(G), the \$39,576 penalty portion of the taxes, as listed in Claim No. 13, should

be classified as non-priority.

ENTERED: December 8, 2003.

**GERALD D. FINES** 

Chief United States Bankruptcy Judge

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#### <u>ORDER</u>

For the reasons set forth in an Opinion entered on the 8th day of December 2003; IT IS HEREBY ORDERED that:

- A. The Objection to Confirmation of Plan filed by the Illinois Department of Revenue on October 1, 2003, is DENIED;
- B. The Objection to Classification of Portions of Claim No. 13 of Illinois Department of Revenue filed by the Debtor on November 7, 2003, is <u>ALLOWED</u>; and,
- C. The Debtors' Plan of Reorganization will be confirmed by separate order to be submitted by Debtors' counsel within 14 days of the date of this Order.

ENTERED: December 8, 2003.

GERALD D. FINES
Chief United States Bankruptcy Judge

### COPY OF OPINION AND ORDER SENT TO:

Bruce Meachum Attorney at Law 110 N. Vermilion Street Danville, IL 61832

John Brunsman Assistant Attorney General 500 South Second Street Springfield, IL 62706

U. S. Trustee Becker Building, Room 1100 401 Main Street Peoria, IL 61602

DATED: December 8, 2003.		
	Deputy Clerk	